FOR ARGUMENT

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No. 94-1453

In the Supreme Court of the United States

OCTOBER TERM, 1995

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D. GRANT PEACOCK, PETITIONER

v.

JACK L. THOMAS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTIONS PRESENTED

1. Whether, in a case arising under federal law, a district court has ancillary jurisdiction in a post-judgment proceeding to disregard the separate legal personality of a corporate judgment debtor and impose personal liability on a controlling shareholder who has siphoned the corporation's assets in order to frustrate collection of the judgment.

2. Whether the Employee Retirement Income Security Act of 1974 (ERISA) prohibits a district court from piercing the veil of a corporation found liable for violating ERISA, to impose liability for the judgment on a shareholder who gained control of the corporation after the violation, and used that control to siphon the corporation's assets and thereby frustrate collection of the judgment.

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1 W. Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* (1990) 24, 25, 27
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3B J. Moore, *Moore's Federal Practice* (2d ed. 1995) 16
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INTEREST OF THE UNITED STATES

The Secretary of Labor, who administers and enforces Title I of the Employee Retirement Income Security Act of 1974 (ERISA), see 29 U.S.C. 1002(13), 1132, 1136(b) (1988 & Supp. V 1993), has a strong interest in ensuring the enforceability of ERISA judgments.

STATEMENT

1. In 1981, petitioner and several co-investors formed Tru-Tech, Inc., to acquire a textile machinery parts business from Rockwell International Corporation. Pet. App. 4a. Tru-Tech's headquarters were established in Spartanburg, South Carolina, and it had plants in that State and in New Hampshire. *Id.* at 31a-32a. In December 1981, the board of directors adopted a pension plan for Tru-Tech's salaried workers. J.A. 4-5, 34.

Tru-Tech soon ran into financial difficulties, however, and it ultimately failed. Pet. App. 5a-6a. In 1985, the company closed its headquarters in Spartanburg, and relocated to space in Pittsburgh, Pennsylvania, that it shared with Peacock, Williams & Company (PWC), a management firm wholly owned by petitioner. *Id.* at 4a-5a, 32a-33a. Around that time, Tru-Tech terminated the pension plan and obtained a reversion of the plan's assets, on the rationale that the plan had been denied tax-qualification by the IRS and, therefore, the participants had obtained no vested rights to benefits. J.A. 35; Pet. App. 56a. In July 1986, Tru-Tech's president was placed on PWC's payroll for the purpose of "wrapping-up Tru-Tech's affairs." *Id.* at 6a-7a.

As Tru-Tech's fortunes declined, petitioner bought out several of his co-investors; by 1987, he owned more than 70% of the company's stock. Pet. App. 6a. From November 1986 until Tru-Tech's dissolution in May 1990, there was substantial intermingling of the funds and personnel of Tru-Tech and PWC, and a general failure to observe corporate formalities among Tru-Tech, petitioner, and PWC. *Id.* at 40a-42a. Petitioner and his employees at PWC were the only functioning Tru-Tech officers and directors, and the company ceased keeping regular accounting or corporate records. *Id.* at 34a, 40a. After March 1988, petitioner—by then Tru-Tech's sole director—ran the company from his office in Pittsburgh, personally directing the disposition of its assets and controlling its financial affairs. *Id.* at 40a.

2. In August 1987, respondent filed suit in the United States District Court for the District of South Carolina, in his individual capacity, on behalf of the pension plan, and as a representative of the class of plan participants, alleging that Tru-Tech, petitioner, and PWC had breached their fiduciary duties under ERISA. Pet. App. 30a; J.A. 35-36. On November 28, 1988, after a bench trial, the

district court found that the pension plan had been approved and qualified by the IRS, thereby vesting the participants' benefits; that Tru-Tech's board of directors later attempted to amend the plan to induce the IRS to issue an adverse determination; that the attempted amendment was invalid; and that the subsequent appropriation of plan assets by Tru-Tech constituted a breach of its fiduciary duties, in violation on 29 U.S.C. 1104(a). See J.A. 18-26, 35-36. The court entered judgment against Tru-Tech in the amount of $187,628.93, plus interest. J.A. 27, 36. It concluded, however, that neither petitioner nor PWC exercised sufficient discretionary authority or control over the administration of the plan, or the disposition of its assets, to make either liable as a plan fiduciary. J.A. 24-25, 36. In April 1990, the court of appeals affirmed. J.A. 33-42.

3. In March 1989, petitioner decided that Tru-Tech would "refrain, for the time being, from payment of any obligations arising out of" the litigation, and instead "use * * * its receivables [to] pay the amounts owed to [PWC] and to [petitioner], personally." Pet. App. 35a. Despite Tru-Tech's insolvency, petitioner transferred from Tru-Tech to PWC and other favored creditors cash, notes and receivables valued at more than $80,000. *Id.* at 8a-10a, 35a-42a. The bulk of the transfers to PWC were made ostensibly in consideration of "financial consulting services" and office space provided by PWC. *Id.* at 6a, 41a.

After the Fourth Circuit affirmed, respondent attempted, unsuccessfully, to collect on the judgment in Pennsylvania state court. Pet. App. 4a. Petitioner's counsel stated, in response to interrogatories, that Tru-Tech was "defunct," and that "there is no one known to [petitioner] or to me who has the authority and knowledge to prepare the answers." *Id.* at 10a.

4. In December 1991, respondent returned to the United States District Court for the District of South Carolina and, on behalf of the pension plan and the plaintiff class, filed a complaint against petitioner and his counsel. Pet. App. 4a; see also J.A. 44-51 (First Amended Complaint). Respondent alleged that Tru-Tech was merely petitioner's "instrumentality," J.A. 49-50; that the 1988 judgment remained unsatisfied, J.A. 45; and that petitioner had "caused and directed the appropriate officers of Tru-Tech, Inc., to make specific transfers of assets to preferred creditors and to squander and waste the assets of the corporation so as to specifically prevent collection of [respondent's] judgment," J.A. 48. Respondent claimed that petitioner's direct control over Tru-Tech's affairs and fraudulent siphoning of the company's assets justified (under ERISA and other applicable federal law) piercing the company's corporate veil and holding petitioner personally liable for the 1988 judgment. J.A. 49.

The district court viewed respondent's suit as "an attempt to satisfy a former judgment properly rendered." Pet. App. 57a. It found that, since November 1986, "the corporate shell of Tru-Tech [had served] merely [as] a facade for the operation of the dominant will of [petitioner]," *id.* at 40a, and that petitioner had directed the management of Tru-Tech's affairs to "siphon off" corporate assets, with a "specific intent * * * to defraud the former employees of Tru-Tech who were beneficiaries of the Pension Plan and to defeat their legitimate attempt to collect a lawful judgment," *id.* at 42a. Relying primarily on cases imposing alter-ego liability under ERISA, but looking also to South Carolina and general federal common law, the court held petitioner personally liable for the 1988 judgment. *Id.* at 43a-51a, 53a.

5. The court of appeals affirmed petitioner's liability for the 1988 judgment. Pet. App. 1a-29a. It rejected petitioner's argument that, because the action was merely one to collect a judgment, the district court lacked subject matter jurisdiction. *Id.* at 11a, 12a. The court relied on "black letter law that 'the jurisdiction of a court * * * continues until [its] judgment [is] satisfied.'" *Id.* at 12a-13a (quoting *Riggs* v. *Johnson County*, 73 U.S. (6 Wall.) 166, 187 (1868)). It explained that, "[b]ecause identification of those parties who are liable is necessarily antecedent to procedural enforcement of the judgment," the veil-piercing determination falls within a court's ancillary jurisdiction. Pet. App. 13a. The court deemed it irrelevant that respondent had filed a separate action to pierce Tru-Tech's corporate veil, observing that subject matter jurisdiction does not turn on whether respondent "pursued the procedurally proper route." *Id.* at 16a.[1]

The court also rejected the notion that ERISA itself precludes piercing the veil of a corporation found liable for violating the Act. The court acknowledged this Court's statement in *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 833 (1988), that "ERISA does not provide an enforcement mechanism for collecting judgments," but observed that "the mere fact that ERISA may not provide an explicit mechanism for judgment enforcement does not mean that ERISA may not provide *jurisdiction* for judgment enforcement." Pet. App. 18a. The court

[1] The court distinguished *H.C. Cook Co.* v. *Beecher*, 217 U.S. 497 (1910), in which the Court stated that a suit to hold corporate directors liable as joint tortfeasors for a patent infringement judgment entered against the corporation was not an ancillary action. It observed that the directors in *Beecher* had acted within their legal capacities in voting to continue sales of the allegedly infringing product during the pendency of the prior suit, while in this case petitioner "deliberately engaged in improper transfers and improperly ignored corporate formalities" to evade an already existing judgment. Pet. App. 15a. Here, the court concluded, unlike in *Beecher*, the subsequent action was not "truly 'independent' of the former action and judgment." *Ibid.*

found similarly unavailing petitioner's reliance on *Mertens* v. *Hewitt Associates*, 113 S. Ct. 2063 (1993). It explained that, while *Mertens* held that ERISA provides no action for money damages against nonfiduciaries, this suit is not an independent action against a nonfiduciary, but an "equitable attempt to satisfy a previous judgment entered against a fiduciary." Pet. App. 19a. The court found no contradiction between the district court's finding of alter-ego liability and its earlier determination that petitioner was not a plan fiduciary. *Id.* at 19a n.14. The tests for fiduciary liability and veil piercing are different, the court noted, and in this case most of the activity giving rise to veil piercing occurred after the corporation's breach of its fiduciary duties. *Ibid.*

Finally, the court rejected petitioner's argument that *Mackey* compelled use of a state law veil-piercing standard. Pet. App. 20a. That would be true, the court stated, if veil piercing were "merely an enforcement mechanism for collecting a judgment." *Ibid.* But, viewing veil piercing as a substantive doctrine that "determines *who* is liable for breaches of ERISA fiduciary duties," the court concluded that "ERISA preempts any state law of veil-piercing." *Ibid.* The court noted, however, that the federal common law standard it applied was consistent "with [its] understanding of the South Carolina rule." *Id.* at 22a n.16.

On the merits, the court sustained as not clearly erroneous the district court's findings of fact, and affirmed its determination that the facts warranted holding petitioner liable for the 1988 judgment. Pet. App. 24a.

SUMMARY OF ARGUMENT

I. Although petitioner portrays this case as an independent action, it is more accurately characterized as a proceeding to prevent the frustration of an existing

judgment. This Court has long recognized that federal courts have jurisdiction to issue orders necessary or appropriate to effectuate their judgments. Thus, for example, this Court has affirmed the exercise of ancillary jurisdiction over contested attachment, garnishment, and fraudulent conveyance proceedings initiated to enforce, or permit the enforcement of, federal judgments. The application of the alter-ego doctrine to hold liable a controlling shareholder who has acted purposely to frustrate collection from a corporate judgment debtor falls securely within this Court's settled precedents.

II. Nothing in ERISA prohibits a federal court from piercing the veil of a corporation found liable for violating the Act, to impose liability for the judgment on a shareholder who gained control of the corporation after the violation and used that control to frustrate collection of the judgment. ERISA itself provides no mechanism for the collection of judgments, and, in the absence of an express statement in the Act precluding an otherwise appropriate enforcement practice (and petitioner points to none here), there is no reason to conclude that the practice is preempted or otherwise disallowed by ERISA.

ARGUMENT

I. A FEDERAL COURT HAS JURISDICTION IN POST-JUDGMENT PROCEEDINGS TO PIERCE THE VEIL OF A CORPORATE JUDGMENT DEBTOR AND HOLD LIABLE A CONTROLLING SHAREHOLDER WHO TOOK STEPS TO DEFEAT COLLECTION OF THE JUDGMENT

1. The jurisdiction of the federal courts extends to "matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 114 S. Ct. 1673, 1676 (1994). That incidental, or "ancillary," jurisdiction

encompasses at its core a court's power "to manage its proceedings, vindicate its authority, and effectuate its decrees." *Ibid.* When a court acts for those purposes, its jurisdiction "is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied." *Wayman* v. *Southard*, 23 U.S. (10 Wheat.) 1, 23 (1825) (Marshall, C.J.); *Riggs* v. *Johnson County*, 73 U.S. (6 Wall.) 166, 187 (1867). As this Court has explained, "[t]he judicial power would be incomplete, and entirely inadequate to the purposes for which it was intended, if, after the judgment, it could be arrested in its progress, and denied the right of enforcing satisfaction." *Bank of the United States* v. *Halstead*, 23 U.S. (10 Wheat.) 51, 53 (1825).[2]

The First Congress provided the federal courts with power to effectuate their judgments in Section 14 of the Judiciary Act of 1789, which authorized the courts to "issue writs of scire facias, habeas corpus, and all other writs not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." 1 Stat. 81-82 (ch. 20). See *Wayman*, 23 U.S. at 23 ("There is no reason for supposing that the general term 'writs,' is restrained by the words, 'which may be necessary for the exercise of their respective jurisdictions,' to original process, or to process anterior to judgments. * * * It is * * * no unreasonable extension of the words of the act, to suppose an execution necessary for the exercise of jurisdiction."); accord *Halstead*, 23 U.S. at 55; *Riggs*, 73 U.S. at 192. That statutory authorization is now codified in 28 U.S.C. 1651(a), which empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." See *Pennsylvania Bureau of Correction* v. *United States Marshals Service*, 474 U.S. 34, 40 (1985) ("[T]his Court consistently has construed the All Writs Act to authorize a federal court 'to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.' ").

[2] See also 23 U.S. at 64 ("An execution is the fruit and end of the suit, and is very aptly called the life of the law. The suit does not terminate with the judgment; and all proceedings on the execution, are proceedings in the suit."); *Riggs*, 73 U.S. at 187 ("Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution."); *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 239 (1934) ("That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled.").

While the doctrine of ancillary jurisdiction "can hardly be criticized for being overly rigid or precise," *Kokkonen*, 114 S. Ct. at 1676, the standard governing enforcement jurisdiction is readily stated: Proceedings that are maintained to effectuate or prevent the frustration of a court's judgment fall within the scope of its ancillary jurisdiction; proceedings that are "entirely new and original" do not. See *Krippendorf* v. *Hyde*, 110 U.S. 276, 285 (1884). Under that standard, the proceedings to collect on the Tru-Tech judgment by holding petitioner personally liable for paying it fell within the district court's ancillary jurisdiction. See *Swift & Co. Packers* v. *Compania Colombiana del Caribe, S.A.*, 339 U.S. 684, 694-695 (1950) (recognizing court's power "to protect its jurisdiction from being thwarted by a fraudulent transfer" of assets from defendant to straw corporation organized and controlled by it); *Dewey* v. *West Fairmont Gas Coal Co.*, 123 U.S. 329, 332-333 (1887) (fraudulent conveyance

action against third party "was an exercise of jurisdiction * * * ancillary to that which [the court] had already acquired in the action at law"); *Empire Lighting Fixture Co.* v. *Practical Lighting Fixture Co.*, 20 F.2d 295, 297 (2d Cir. 1927) (L. Hand, J.) (exercising ancillary jurisdiction where majority shareholder fraudulently conveyed corporate assets to defeat a judgment); *Blackburn Truck Lines, Inc.* v. *Francis*, 723 F.2d 730, 732-733 (9th Cir. 1984) (post-judgment action to pierce corporate veil is proceeding in aid of underlying judgment).[3]

2. Petitioner's contrary arguments derive from a constricted view of ancillary jurisdiction that cannot be squared with this Court's holdings. Petitioner maintains that "any exercise of ancillary jurisdiction * * * must be *necessary* to the court's function in adjudicating a given case," Pet. Br. 37, and argues that "the availability of a

[3] This Court has approved the exercise of ancillary jurisdiction in a wide variety of circumstances. See, *e.g.*, *Dugas* v. *American Surety Co.*, 300 U.S. 414, 428 (1937) (to support judgment holding party not liable by blocking suit by nonparty that would have had the effect of imposing liability); *Alexander* v. *Hillman*, 296 U.S. 222, 239 (1935) (to permit receiver to recover fraudulent conveyances made to corporate officers); *Local Loan Co.*, 292 U.S. at 239 (to block state court action to assign wages of debtor whose debts had been discharged in bankruptcy); *Root* v. *Woolworth*, 150 U.S. 401, 413 (1893) (to enforce judgment denying party title to land, when that party moved back onto the land and started leasing it); *Labette County Comm'rs* v. *United States ex rel. Moulton*, 112 U.S. 217, 221 (1884) (to require county commissioners to levy tax to pay judgment against township); *Krippendorf*, 110 U.S. at 286 (to entertain dispute regarding ownership of attached property); *Riggs*, 73 U.S. at 198 (to require county officers to levy tax to pay judgment against county). See also 12 C. Wright & A. Miller, *Federal Practice and Procedure* § 3012, at 66-68 (1973) (garnishment, arrest, mandamus, contempt, appointment of receiver, determination of liability of successor corporation, and issuance of deficiency judgment are "proceedings supplementary to and in aid of judgment").

state forum to try matters such as this one [suggests] that federal court jurisdiction over an action like this one is not 'necessary,'" *id.* at 40. That formulation has no basis in the law.

This Court has held, repeatedly, that the power to enforce a judgment is a power "necessary for the exercise of jurisdiction," *Wayman*, 23 U.S. at 23; accord *Halstead*, 23 U.S. at 55; *Riggs*, 73 U.S. at 187, but it has never gauged a court's power in a given case by whether its exercise is essential, in the sense that resort could not be had to state court. See *Pennsylvania Bureau of Correction*, 474 U.S. at 40 (courts' "supplemental powers [under the All Writs Act] are not limited to situations where it is 'necessary' to issue the writ or order 'in the sense that the court could not otherwise physically discharge its * * * duties"). State courts are, and have always been, capable of entertaining actions in aid of federal judgments. Indeed, under Rule 69(a) of the Federal Rules of Civil Procedure and its statutory antecedents, Congress has directed federal courts to adopt state practices and procedures in proceedings for the execution of money judgments. See pages 23-24, *infra*. If petitioner's conception of "necessity" were the rule, the federal courts would have no enforcement jurisdiction in such cases.

Even petitioner concedes that a court has jurisdiction (regardless of the availability of a state forum) to enforce a money judgment against the parties thereto. See Pet. Br. 38. His argument therefore reduces to a claim that the relief afforded in this case exceeded the bounds of enforcement jurisdiction, because respondent filed "a new lawsuit," *id.* at 40, "with a new claim and a new substantive remedy," against a person not otherwise subject to the judgment, *id.* at 38-39. Those attributes do not distinguish this case from others in which this Court has approved the exercise of ancillary jurisdiction.

The argument (Pet. Br. 40-41) that this proceeding is not ancillary because it has "a new caption," and was "begun with a new summons and complaint," rests on notions of formal pleading that do not govern the existence *vel non* of subject matter jurisdiction. This Court rejected a similar argument in *Alexander* v. *Hillman*, 296 U.S. 222 (1935), which held that a supplemental bill filed by corporate receivers was not "an original bill for the commencement of a suit," even though filed in a "form not inappropriate for commencement of suit." *Id.* at 239. Recognizing that the bill was "in fact formulated and filed to serve as a pleading in the main suit," the court explained that "[t]reating their established forms as flexible, courts of equity may suit proceedings and remedies to the circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge and promptly to enforce substantial rights of all the parties." *Ibid.* In this case, similarly, the district court and the court of appeals both recognized that, although filed as a separate action, respondent's suit was in substance an action to collect the underlying money judgment. Pet. App. 57a; *id.* at 3a.[4] To the extent that respondent's papers stated "[d]efective allegations of jurisdiction," such defects may be corrected on appeal. See 28 U.S.C. 1653.

Nor is this proceeding rendered non-ancillary because it involves some facts and legal issues distinct from those on which the underlying suit was based. The species of ancillary jurisdiction that is at issue in this case is analytically distinct from the doctrine more commonly known as "pendent jurisdiction," under which a court may dispose of claims that are otherwise beyond its juris-

[4] That was petitioner's understanding as well. See Pet. C.A. Br. 15 ("Plaintiff has * * * consistently characterized this lawsuit as an action for the collection of a judgment.").

diction because they are factually interdependent with the claims that form the basis for its jurisdiction. See *Kokkonen*, 114 S. Ct. at 1676; see generally S. Glenn, Note, *Federal Supplemental Enforcement Jurisdiction*, 42 S.C. L. Rev. 469 (1991).[5] In most cases in which a federal court acts to preserve its authority or effectuate its judgments, whether through attachment, mandamus, garnishment, or the voidance of fraudulent conveyances, the action will not turn on the facts and bases for liability involved in the underlying suit. In enforcement proceedings, the requisite "logical dependence," see *Owen Equipment & Erection Co.* v. *Kroger*, 437 U.S. 365, 376 (1978), lies in the attempt through the latter proceeding to enforce the judgment obtained in the former.[6]

There is also nothing exceptional in the assertion in supplementary proceedings of claims against third persons who were not parties to the underlying suit. This Court has sanctioned the exercise of ancillary jurisdiction

[5] Unlike its amicus, see National Association of Real Estate Investment Managers Amicus Br. (Mgrs. Br.) 10-12, petitioner acknowledges that, "[w]hen dealing with [a court's enforcement jurisdiction], the familiar common-nucleus test for determining what constitutes a single constitutional case cannot be applied," Pet. Br. 36-37; accord Glenn, *supra*, 42 S.C. L. Rev. at 493-495.

[6] Petitioner's amicus is incorrect in asserting that "this Court has never held that jurisdiction exists to allow a plaintiff in a subsequent action to bring a claim that requests relief of a 'different kind' or that rests on a 'different principle.'" Mgrs. Br. 5 (quoting *Dugas*, 300 U.S. at 428). Post-judgment actions in support of monetary awards often seek relief of a "different kind" by invoking the courts' equitable powers. See *Dewey*, 123 U.S. at 332-333; *Local Loan Co.*, 292 U.S. at 239. And because supplemental actions may involve contested rights to property and other matters governed by state law, they may rest on "different principles" than those relevant to the underlying case. To the extent that *Dugas* may be read to state otherwise, "[t]he doctrine of ancillary jurisdiction [is not as confined] as that statement suggests." *Kokkonen*, 114 S. Ct. at 1676.

over disputes with nonparties regarding the ownership of attached property, see, *e.g.*, *Minnesota Co.* v. *St. Paul Co.*, 69 U.S. (2 Wall.) 609 (1864); *Krippendorf* v. *Hyde*, *supra*; *Swift & Co. Packers* v. *Compania Colombiana del Caribe, S.A.*, *supra*;[7] garnishment, see *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 834 n.10 (1988);[8] voidance of fraudulent conveyances, see *Dewey* v.

[7] Ancillary jurisdiction over disputes regarding the ownership of attached property has been justified, in part, on the unfairness of leaving a third-party claimant without a remedy in the court that has sole possession and control over the subject property. See, *e.g.*, *Krippendorf*, 110 U.S. at 281; *Finley* v. *United States*, 490 U.S. 545, 551 (1989). Even assuming that possession of the property establishes jurisdiction over the dispute, that does not answer why the courts have jurisdiction, in the first place, to order the attachment of property whose ownership is subject to dispute. The Court adverted to that point in *Swift & Co. Packers*:

> Disputes over ownership of attached vessels are of course inevitable since only the respondent's property may be attached. Inevitably such disputes may involve transactions not themselves the subject matter of an independent libel. If jurisdiction be wanting in a court of admiralty when such a controversy arises in the context of an attachment made in a libel over which the court indubitably has jurisdiction, a congenital defect would have to be attributed to the ancient process of foreign attachment.

339 U.S. at 693 (citations omitted).

[8] See also *Vukadinovich* v. *McCarthy*, 59 F.3d 58, 62 (7th Cir. 1995) (Posner, J.) ("Garnishment is a standard, often essential, step in the collection of a judgment, and the party holding the judgment * * * ought to be able to take this step without having to start a new lawsuit in a different court system."). Other lower courts generally agree. See *Skevofilax* v. *Quigley*, 810 F.2d 378, 385 (3d Cir.) (en banc), cert. denied, 481 U.S. 1029 (1987); *United States ex rel. Goldman* v. *Meredith*, 596 F.2d 1353, 1357 (8th Cir.), cert. denied, 444 U.S. 838 (1979); *Sandlin* v. *Corporate Interiors Inc.*, 972 F.2d 1212, 1216 (10th Cir. 1992); *In re American Freight System, Inc.*, 173 B.R. 739 (Bankr. D. Kan. 1994); but see *Berry* v. *McLemore*, 795 F.2d 452, 455-456 (5th Cir. 1986).

West Fairmont Gas Coal Co., *supra*;[9] and actions to require public officials to levy taxes to pay money judgments against state subdivisions, see *Riggs* v. *Johnson County*, *supra*; *Labette County Comm'rs* v. *United States ex rel. Moulton*, *supra*.

A supplemental bill to pierce the veil of a corporate judgment debtor is no less clearly dependent on an underlying suit than are proceedings for garnishment or voidance of fraudulent conveyances. Although the latter can be described as mere attempts to trace the assets of the judgment debtor, the former can just as easily be described as an attempt to identify the judgment debtor,[10] similar in that respect to identification of a successor

[9] In *Dewey*, the defendant/counterclaimant in an action at law filed a bill in equity against a nonparty who allegedly had received a fraudulent conveyance from the plaintiff. The bill was filed prior to the judgment in the underlying action, to secure property that might be needed to pay the counterclaim. This Court concluded that "[t]he suit in equity was an exercise of jurisdiction on the part of the Circuit Court ancillary to that which it had already acquired in the action at law." 123 U.S. at 332-333. (It is irrelevant, for purposes of assessing the existence of ancillary jurisdiction, that the bill in *Dewey* was filed prior to judgment, as a precautionary matter, rather than after the judgment, to secure satisfaction of it. See *Swift & Co. Packers*, 339 U.S. at 694.) See also *Marsh* v. *Burroughs*, 16 F. Cas. 800, 802 (C.C.S.D. Ga. 1871) (No. 9,112) ("[I]t has long been settled that a judgment creditor * * * may * * * file a bill against persons holding property of the debtor which, on account of fraud * * *, cannot be reached by execution.").

[10] See, *e.g.*, *Massachusetts Laborers' Health & Welfare Fund* v. *Starrett Paving Corp.*, 845 F.2d 23, 26 (1st Cir. 1988) (Breyer, J.) ("When state law pierces the corporate veil, where the owner is the corporation's alter ego, where state or other relevant federal law makes the owner liable, it is fairly easy to say that the owner *is* the corporation.").

corporation.[11] Garnishment, contested attachment, and fraudulent conveyance proceedings, like the action at issue in this case, involve the adjudication of third parties' substantive interests. In those proceedings, moreover, the third party may well have no significant relationship with either the judgment debtor or the judgment. In this case, by contrast, petitioner was held liable because he gutted the judgment debtor, which he controlled, purposefully to frustrate collection of the judgment.

Petitioner's contrary argument cannot, in any event, be reconciled with this Court's holdings in *Riggs* and *Labette County Comm'rs*. In *Riggs*, after a bondholder obtained a money judgment in federal court against the county that had issued the bonds, a state court enjoined the county officers from levying a tax to pay the judgment. This Court affirmed the jurisdiction of the federal court to issue a writ of mandamus directing the county officers to levy the tax, concluding that the proceeding was not "a new suit, in the jurisdictional sense," but "a proceeding ancillary to the judgment which g[ave] the jurisdiction," and that the writ "substitute[d] for the ordinary [state law] process of execution to enforce the payment of the same." 73 U.S. at 198.

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[11] Under Rule 25(c) of the Federal Rules of Civil Procedure, "[i]n case of any transfer of interest, * * * the court upon motion [may] direct[] the person to whom the interest is transferred to be substituted in the action." Such substitution may be ordered in the course of post-judgment enforcement proceedings. 3B J. Moore, *Moore's Federal Practice* ¶ 25.03, at 25-21 (2d ed. 1995); *Explosives Corp. of America* v. *Garlam Enterprises Corp.*, 817 F.2d 894, 907 (1st Cir.), cert. denied, 484 U.S. 925 (1987); *Minnesota Mining & Mfg. Co.* v. *Eco Chem, Inc.*, 757 F.2d 1256, 1262-1263 (Fed. Cir. 1985); *Panther Pumps & Equipment Co.* v. *Hydrocraft, Inc.*, 566 F.2d 8, 23 (7th Cir. 1977), cert. denied, 435 U.S. 1013 (1978). See also *Dunn* v. *Clarke*, 33 U.S. (8 Pet.) 1, 3 (1834) (ancillary jurisdiction exists as to post-judgment claims respecting "parties or privies to the suit at law").

Petitioner contends that the action in *Riggs* "did not impose liability on a stranger to the judgment," and instead merely "directed compliance with the court's order by the party with the authority to render that compliance." Pet. Br. 35 n.25.[12] In *Riggs*, however, the petition for mandamus was filed against county officers, who were not parties to the initial action, and ultimately sought an order that would have the effect of imposing liability for the judgment on the county's taxpayers. The imposition of liability on petitioner—a controlling shareholder who intentionally obstructed collection of a judgment against the corporation—was tied more closely to the underlying action.

In *Labette County Comm'rs*, this Court affirmed the jurisdiction of a circuit court, which had adjudicated a township's liability on bonds, to issue a writ of mandamus to compel the county board of commissioners to levy a tax on property within the township to pay the judgment. The Court rejected the argument that the mandamus proceeding was not ancillary because it involved persons who were not parties to the underlying suit:

> [I]t does not follow because the jurisdiction in mandamus is ancillary merely that it cannot be exercised

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[12] The dissent in *Riggs* made many of the arguments respecting the limits of ancillary jurisdiction that petitioner raises in the present case. See, *e.g.*, 73 U.S. at 206 ("The subject-matter of the suit in the Federal court was the ordinary collection of a debt from Johnson County. * * * The County of Johnson is a corporation capable to sue and be sued. The supervisors are officers of whom certain duties are required. They are not identical, and cannot be sued for the same purpose."); *id.* at 207 ("It is clear that it is not a mere ancillary writ, but is in all cases a separate action."); *id.* at 208 ("We have already shown that the parties are different. The purpose of it is to enforce the levy of a tax; an object which could never be obtained, and which is not within the scope of an action of assumpsit.").

over persons not parties to the judgment sought to be enforced. * * *

> The question is, whether the respondents, to whom the writ is addressed, have the legal duty to perform, which is required of them, and whether the relator has a legal right to its performance from them, by virtue of the judgment he has already obtained. If so, then they are, as here, the legal representatives of the defendant in that judgment, as being the parties on whom the law has cast the duty of providing for its satisfaction.

112 U.S. at 221. Just as the Labette County Commissioners had a duty to levy a tax to pay the judgment on the municipal bonds, so too does petitioner have a duty to pay the judgment owed by his corporate alter ego. See pages 25-26, *infra*.

3. A given enforcement claim may be sufficiently attenuated from the underlying action that, absent an independent basis for subject matter jurisdiction, the claim should not be entertained in federal court. See, *e.g.*, *Skevofilax* v. *Quigley*, 810 F.2d 378, 388-389 (3d Cir.) (en banc) (Becker, J., concurring in the judgment) (positing "post-judgment pursuit of a questionable gambling debt allegedly due the defendant from a non-diverse party who was not involved in the principal litigation"), cert. denied, 481 U.S. 1029 (1987). But the existence of that possibility in some instances does not counsel the creation of new and rigid jurisdictional rules. This Court has wisely refused to circumscribe the scope of the courts' enforcement authority, in light of the variety of ways in which parties and their privies may seek to frustrate lawful judgments. Moreover, the existence of jurisdiction does not compel its exercise. *Local Loan Co.*, 292 U.S. at 241; *Swift & Co. Packers*, 339 U.S. at 695 ("[B]ecause power exists, its use is not inexorable."); *Argento* v. *Village of Melrose Park*, 838 F.2d 1483, 1490 (7th Cir. 1988) ("[I]t is within the

district court's discretion to determine when it is appropriate to exercise ancillary jurisdiction."). Thus, courts may consider matters such as judicial economy, comity,[13] and fairness to litigants, and should assure a sufficient nexus to the underlying judgment. Cf. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726 (1966).

Although we agree with petitioner (see Pet. Br. 41-42) that evidence of specific congressional intent may be relevant to the scope and proper exercise of a court's ancillary jurisdiction to enforce a judgment obtained under a federal statute, that consideration argues for broad authority to enforce judgments rendered under ERISA. Congress recognized in the Act itself that the substantive provisions of ERISA would be effective only if combined with "appropriate remedies, sanctions, and ready access to the Federal courts," 29 U.S.C. 1001(b), and ERISA's enforcement provisions accordingly were "designed specifically to provide * * * participants and beneficiaries with broad remedies for redressing or preventing violations of the Act," H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973).[14] To that end, ERISA provides nationwide venue and service of process, and, except for certain actions to recover benefits, exclusive federal jurisdiction in suits to enforce the Act. 29 U.S.C. 1132(a),

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[13] Comity will not necessarily counsel abstention. "A rule requiring that there be a separate state lawsuit to enforce a federal court judgment by garnishment process would actually impair any identifiable interest of that state. It would impose on the state courts the role of serving as an auxiliary or adjunct to the district court by cleaning up the loose ends of a district court lawsuit." *Skevofilax*, 810 F.2d at 385.

[14] See also H.R. Rep. No. 533, *supra*, at 17 (ERISA was drafted "to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law for recovery of benefits due to participants"); S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973).

(e)(1) and (2), and (f) (1988 & Supp. V 1993). In addition, ERISA's principal enforcement provisions (pled by respondent in the initial action against Tru-Tech, see *Tru-Tech* Complaint 6-7) bestow on the courts expansive remedial authority. See 29 U.S.C. 1109(a) ("such other equitable or remedial relief as the court may deem appropriate"); 29 U.S.C. 1132(a)(3) ("other appropriate equitable relief * * * to redress such violations"). Congress's intention to ensure a federal forum and to provide effective equitable remedies supports the existence of corresponding authority to effectuate judgments rendered under the Act, including, as in this case, the invocation in appropriate circumstances of the equitable remedy of piercing the corporate veil.

4. The decision of the court of appeals is consistent with *H.C. Cook Co.* v. *Beecher*, 217 U.S. 497 (1910). In *Beecher*, the plaintiff previously had sued a corporation for patent infringement and attempted "at the last moment" to add the corporation's directors as defendants. *H.C. Cook Co.* v. *Beecher*, 172 F. 166 (C.C.D. Conn. 1909), aff'd, 217 U.S. 497 (1910). The circuit court concluded that the directors could have been added "[u]pon a proper showing," but had refused to do so because the attempt "came too late." *Ibid.* After obtaining a judgment against the corporation, the plaintiff filed a second suit in the same circuit court to collect the judgment from the directors, alleging that they were liable as "joint trespassers" in the patent infringement. *Ibid.* The circuit court dismissed the action. It held that the plaintiff had failed to plead a claim of patent infringement against the directors, because "[n]either the validity of the patent nor its infringement [wa]s put in issue by the complaint." *Id.* at 167. The court further held that the suit was not in the nature of an ancillary action, reasoning that, because the plaintiff had "acquiesced in" the court's refusal to add the directors as

parties in the prior suit, the court's "jurisdiction * * * over [the] parties as litigants in a patent suit ended" with the entry of judgment against the corporation alone. *Ibid.*

In this Court, the plaintiff in *Beecher* did not rely on ancillary jurisdiction, but instead argued "that the [directors] and their corporation were joint tort-feasors, and that this [wa]s a suit against the defendants for their part in infringing its patent." 217 U.S. at 498. The Court rejected that argument, agreeing with the circuit court that the complaint read as "an attempt to make the [directors] answerable for the judgment already obtained." *Ibid.* The Court found that reading supported by the fact that one of the grounds of jurisdiction urged in the circuit court was that the action was ancillary to the judgment in the former suit—although the Court added (in what is best regarded as dictum) that "of course it [was] not." *Id.* at 498-499. The Court then concluded that, "*[a]part from that contention*, * * * if the directors are under obligations by Connecticut law to pay a judgment against their corporation, that is not a matter that can be litigated between citizens of the same State in the Circuit Court of the United States." *Id.* at 499 (emphasis added).

Because the Court did not elaborate, it is unclear why it stated that the action was not ancillary to the judgment in the former suit.[15] But the opinion in *Beecher* is perhaps best read, in light of the facts, to indicate that a party may

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[15] The lower courts have also found the opinion perplexing. See, *e.g.*, *Sandlin*, 972 F.2d at 1217 (a "cryptic" opinion); *Argento*, 838 F.2d at 1488 ("three paragraphs long containing a conclusion, but virtually no discussion"); *Skevofilax*, 810 F.2d at 385 n.4 (a "delphic pronouncement"). Perhaps for that reason, the case has rarely been cited (and never by this Court). Although *Beecher* is amenable to various interpretations, the interpretation urged by petitioner (Pet. Br. 29-31) would, as we have explained, be inconsistent with the Court's prior and subsequent holdings.

not invoke a court's ancillary jurisdiction to raise issues that could have been timely raised in the underlying proceeding.[16] In this case, respondent is not attempting to add a claim that he neglected to raise in the litigation against Tru-Tech; respondent alleges that petitioner took steps after the Tru-Tech judgment to frustrate its satisfaction, not that petitioner was a "joint trespasser" in Tru-Tech's underlying fiduciary breach.

Moreover, the plaintiff in *Beecher* did not claim that the directors should be held liable as alter egos of the defendant corporation. The directors were alleged to have acted within their capacities as directors when they determined that the defendant corporation would continue to sell the allegedly infringing products during the pendency of the suit. 217 U.S. at 498. As Judge Learned Hand later explained, in *Beecher* "the plaintiff tried to hold the directors of a company upon their liability as such." *Empire Lighting*, 20 F.2d at 297. The claim made against the directors in *Beecher* was "truly

[16] The Court's lone citation, to *Stillman* v. *Combe*, 197 U.S. 436 (1905), supports that reading. In *Stillman*, the Court held that a federal circuit court lacked ancillary jurisdiction to adjudicate parties' conflicting claims to land, when those parties had earlier dismissed their suit and agreed to support the rights of two of their number to effect a sale of the property to the United States, with an understanding that they would later arbitrate their respective interests in the proceeds. *Id.* at 441. The Court explained: "The parties gave up their right to have the court decide who had rights in the land and the extent of their shares, and substituted a contract and a decision out of court. They still rely upon the contract, and they must be left to their remedy upon it." *Ibid.* *Stillman* therefore resembles *Kokkonen*, in which the Court found no ancillary jurisdiction to enforce the terms of a settlement agreement that was not incorporated into the order of dismissal. In *Stillman*, as in *Kokkonen*, "the only order [at issue] was that the suit be dismissed, a disposition that [was] in no way flouted or imperiled by the alleged breach of the settlement agreement." 114 S. Ct. at 1677.

'independent' " (Pet. App. 15a), in the sense that it alleged either a substantive federal patent law violation by the directors or a pure state law claim against them (see *Cushman* v. *Warren-Scharf Asphalt Paving Co.*, 220 F. 857, 862 (7th Cir.), cert. denied, 238 U.S. 621 (1915)), not a federal claim based on a scheme to deprive the patent holder of his federal judgment.

5. Petitioner did not present to this Court the question whether, if the district court had ancillary jurisdiction in this case, it correctly ruled on the merits that petitioner is liable for the 1988 judgment against Tru-Tech. There accordingly is no occasion for this Court to decide whether the federal courts should borrow veil-piercing and alter-ego principles from state law in cases such as this, or should instead develop uniform federal principles. Resolution of that issue would not affect the outcome of this case in any event, since both the district court and the court of appeals found the federal common law standard they adopted consonant with that used in South Carolina. See Pet. App. 22a n.16, 47a. We shall nevertheless offer some general observations about that issue, in order to place this case in a broader context.

Although the enforcement of judgments by federal courts is authorized and controlled by federal law, Congress has long directed the courts, in actions at common law, to borrow state law enforcement procedures. See *Riggs*, 73 U.S. at 189-192; see, *e.g.*, *Krippendorf* v. *Hyde*, *supra* (applying Indiana process for attachment of property); *Dewey* v. *West Fairmont Gas Coal Co.*, *supra* (applying West Virginia law of fraudulent conveyances). Insofar as money judgments are concerned, that direction now resides in Rule 69(a) of the Federal Rules of Civil Procedure, which provides in relevant part:

> Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court

> directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, * * * except that any statute of the United States governs to the extent that it is applicable.

Under Rule 69(a), in the absence of a controlling federal statute, "the same relief is available in federal court for the satisfaction of a federal court judgment as would be available in a state court." *Skevofilax*, 810 F.2d at 384.

As the court below observed (Pet. App. 12a), and petitioner conceded below (Pet. C.A. Br. 26-27), " 'piercing the corporate veil' is not a separately maintainable cause of action; instead it is a theory of recovery applicable in actions against corporations." See also 1 W. Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 41, at 603 (1990). Whether to pierce the corporate veil is, in that respect, an equitable determination "subsidiary to [a] primary cause of action." Pet. App. 12a. In circumstances in which an alter ego's liability is premised on its responsibility for the corporation's violation of a federal statute, the decision whether to pierce the corporate veil is subsidiary to the underlying cause of action, and the standard for assessing alter-ego liability is, quite properly, informed by the policies and purposes of the federal statute.[17] See *First Nat'l City Bank* v. *Banco*

[17] For that reason, we agree with the majority of the courts of appeals, which, in cases arising under ERISA, have looked to the policies of the Act in determining whether to hold liable as an alter ego a person who controlled the corporate defendant at the time of the statutory violation. See *United Elec. Workers* v. *163 Pleasant St. Corp.*, 960 F.2d 1080, 1092 (1st Cir. 1992); *Lowen* v. *Tower Asset Management, Inc.*, 829 F.2d 1209, 1220-1221 (2d Cir. 1987); *Laborers' Pension Trust Fund* v. *Sidney Weinberger Homes, Inc.*, 872 F.2d 702, 704-705 (6th Cir. 1988); *Laborers Clean-Up Contract Admin. Trust Fund* v. *Uriarte Clean-Up Service, Inc.*, 736 F.2d 516, 523-524 (9th Cir. 1984); *Combs* v. *Ryan's Coal Co.*, 785 F.2d 970, 982-983 (11th Cir.), cert. denied, 479 U.S. 853 (1986); but see *Levit* v. *Ingersoll Rand Fin. Corp.*, 874 F.2d 1186, 1193-1194 (7th Cir. 1989) (applying state law standard).

Para El Comercio Exterior de Cuba, 462 U.S. 611, 629-630 (1983) ("[T]he Court has consistently refused to give effect to the corporate form where it is interposed to defeat legislative policies."); 1 W. Fletcher, *supra*, § 41, at 166; see, *e.g.*, *Pierce* v. *United States*, 255 U.S. 398 (1921) (enforcing shareholders' liability for holding company's double indemnity obligations under federal banking law).

In this case, however, petitioner's liability for the 1988 judgment was not premised on a determination that he was responsible for Tru-Tech's violation of ERISA. Rather, petitioner was ordered to pay the judgment entered against Tru-Tech because, *after* the statutory violation, he siphoned the corporation's assets purposely to frustrate respondent's ability to collect the judgment. That conduct implicated not only the statutory interest under ERISA in protecting the rights of plan participants and their beneficiaries, see 29 U.S.C. 1001(b), but also (and more immediately) the interest in enforcing and preventing the frustration of the existing judgment. When the veil-piercing inquiry is subsidiary and antecedent to collection of a judgment, Rule 69(a) suggests that a federal court should look in the first instance to state law. At least where application of a state law standard would not frustrate the relevant interests in enforcing the judgment (see *Hankins* v. *Finnel*, 964 F.2d 853, 860-861 (8th Cir.), cert. denied, 113 S. Ct. 635 (1992); cf. *O'Melveny & Myers* v. *FDIC*, 114 S. Ct. 2048, 2055 (1994)), that standard would appropriately furnish the rule of decision. See *United States* v. *Pena*, 731 F.2d 8, 12-13 (D.C. Cir. 1984) (applying state law veil-piercing standard to ancillary claim);

Christiansen v. *Mechanical Contractors Bid Depository*, 404 F.2d 324, 325 (10th Cir. 1968) (same); cf. *Sandlin* v. *Corporate Interiors Inc.*, 972 F.2d 1212, 1218 (10th Cir. 1992) (reaffirming *Christiansen* in post-judgment transfer context).

The South Carolina courts use a two-prong test for piercing the corporate veil. *Multimedia Publishing of South Carolina, Inc.* v. *Mullins*, 431 S.E.2d 569, 571 (S.C. 1993). The first prong is an eight-factor analysis of the shareholder's relationship to the corporation, focussing on the observance (or not) of corporate formalities by the dominant shareholder. *Cumberland Wood Products, Inc.* v. *Bennett*, 417 S.E.2d 617, 619 (S.C. Ct. App. 1992).[18] The second prong requires proof that shielding the dominant shareholder from liability would be fundamentally unfair. *Mullins*, 431 S.E.2d at 571. "The burden of proving fundamental unfairness requires that the plaintiff establish (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." *Sturkie* v. *Sifly*, 313 S.E.2d 316, 319 (S.C. Ct. App. 1984). That test adequately serves the purposes of ERISA in furnishing appropriate relief in a case such as this.[19]

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[18] The factors are "(1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder." *Cumberland Wood Products*, 417 S.E.2d at 619.

[19] Petitioner argues (Pet. Br. 26 n.16, 27 & n.17) that because he did not control Tru-Tech or appropriate its property until after Tru-Tech committed the ERISA violations, the appropriate remedy was a suit to void his fraudulent conveyances, not an action to pierce Tru-Tech's corporate veil. He contends, on that ground, that the district court erred in holding him liable for the entire judgment instead of ordering him to return the funds that he wrongfully appropriated. "[P]osttort activity," however, "when conducted to strip the corporation of its assets in anticipation of impending legal liability, may be considered in making the determination whether to disregard the corporate entity." 1 Fletcher, *supra*, § 45, at 821; see *Thoni Trucking Co.* v. *Foster*, 243 F.2d 570, 571 (6th Cir. 1957). And while some authorities hold that veil piercing should not be used in circumstances where improper transfers of corporate assets have been avoided as fraudulent conveyances, see, *e.g.*, *Morgan* v. *Burks*, 611 P.2d 751, 755-756 (Wash. 1980), or limit recovery in such circumstances to the amount of the wrongful transfer, see *AYR Composition, Inc.* v. *Rosenberg*, 619 A.2d 592, 598 (N.J. Super. Ct. App. Div. 1993), there is also authority to the contrary, see *Boyd* v. *Boyd & Boyd, Inc.*, 386 N.W.2d 540, 544-545 (Iowa Ct. App. 1986); see also, *e.g.*, *Minnesota Mining & Mfg. Co.* v. *Eco Chem, Inc.*, *supra*; *H.H. Robertson Co.* v. *V.S. DiCarlo General Contractors, Inc.*, 994 F.2d 476 (8th Cir.), cert. denied, 114 S. Ct. 621 (1993); *Thoni Trucking Co.* v. *Foster*, *supra*. We know of no South Carolina authority on the issue. In any event, as we have noted, petitioner did not seek review of whether the court of appeals correctly applied the principles of veil piercing.

II. ERISA DOES NOT PRECLUDE IMPOSITION ON PETITIONER OF LIABILITY FOR THE JUDGMENT RENDERED AGAINST TRU-TECH

Neither *Mertens* v. *Hewitt Associates*, 113 S. Ct. 2063 (1993), nor *Mackey* v. *Lanier Collection Agency & Service, Inc.*, *supra*, restricts the authority of a federal court to exercise its ancillary jurisdiction to enforce judgments obtained under ERISA. In *Mertens*, this Court held that ERISA does not provide a cause of action for money damages against a nonfiduciary who knowingly participates in a fiduciary breach, and suggested, in dicta (113 S. Ct. at 2067-2068), that ERISA may provide no cause of action at all against such a nonfiduciary. In the course

of that decision, the Court expressed its unwillingness "to infer causes of action in the ERISA context, since that statute's carefully crafted and detailed enforcement scheme provides 'strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.'" *Id.* at 2067 (quoting *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 146-147 (1985)). Relying primarily on *Mertens*, petitioner argues (Pet. Br. 15-20) that because ERISA already looks to substance, rather than corporate form, in defining who is a plan fiduciary, and thus who is liable for fiduciary misconduct, the courts may not hold liable a shareholder who does not qualify as a fiduciary under a veil-piercing theory that is not expressly codified in the Act. That issue is not presented in this case.

The issue raised by petitioner arises in suits filed against shareholders who are claimed to be responsible, under a veil-piercing theory, for ERISA violations committed by corporations that they control.[20] Petitioner was not held liable under a theory that he was responsible for Tru-Tech's fiduciary misconduct.[21] Rather, he was ordered to pay the judgment against Tru-Tech because, after the ERISA violation, he gained control of Tru-Tech and siphoned its assets to prevent collection of the judgment. Nothing in *Mertens* suggests that, because petitioner was found not to be liable as a fiduciary, he was thereby licensed to misuse his corporate position to thwart respondent's attempts to collect the judgment.

In *Mackey*, this Court recognized that ERISA itself provides no enforcement mechanism for collecting judgments obtained under the Act. 486 U.S. at 833. Accordingly, the Court concluded, the enforcement of ERISA judgments, like the enforcement of other federal judgments, is guided by Rule 69(a), and, "[c]onsequently, state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA." *Id.* at 834. Rejecting the claim that Georgia's garnishment statute was preempted, the Court noted that "[w]hen Congress intended in ERISA to preclude a particular method of state-law enforcement of judgments, * * * it

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[20] The courts of appeals that have decided the issue raised by petitioner have uniformly recognized the propriety of veil piercing in actions under Section 515 of the Act, 29 U.S.C. 1145, to collect unpaid plan funding contributions. See, *e.g.*, *United Elec. Workers*, 960 F.2d at 1091-1096; *Lumpkin* v. *Envirodyne Indus., Inc.*, 933 F.2d 449, 460-463 (7th Cir.), cert. denied, 502 U.S. 939 (1991); *Leddy* v. *Standard Drywall, Inc.*, 875 F.2d 383, 387-388 (2d Cir. 1989); *Laborers' Pension Trust Fund*, 872 F.2d at 704-705; *Alman* v. *Danin*, 801 F.2d 1, 3-4 (1st Cir. 1986); *Combs*, 785 F.2d at 982-983; *Laborers Clean-Up Contract Admin. Trust Fund*, 736 F.2d at 523-524. See also *Lowen*, 829 F.2d at 1220-1221 (holding controlling shareholders liable for fiduciary breach).

[21] Petitioner argues that, since he was not held liable under a distinct ERISA cause of action, Section 502(e) of the Act, 29 U.S.C. 1132(e) (the nationwide service of process provision) cannot apply, and the decision below must be reversed for lack of personal jurisdiction. Pet. Br. 28 n.18. As petitioner notes (*id.* at 29 n.18), however, the court of appeals was silent respecting its reasons for rejecting petitioner's challenge to personal jurisdiction. Despite petitioner's contrary assertion, the court may have concluded that petitioner had sufficient contacts with South Carolina to satisfy due process. See *Minnesota Mining & Mfg. Co.*, 757 F.2d at 1265 ("[A] court which has jurisdiction over a corporation has jurisdiction over its alter egos."); accord *United Elec. Workers*, 960 F.2d at 1091; *Lakota Girl Scout Council, Inc.* v. *Havey Fund-Raising Management, Inc.*, 519 F.2d 634, 637 (8th Cir. 1975); *International Controls Corp.* v. *Vesco*, 490 F.2d 1334, 1350 (2d Cir.), cert. denied, 417 U.S. 932 (1974); *Velandra* v. *Regie Nationale des Usines Renault*, 336 F.2d 292, 296 (6th Cir. 1964). See also *I.A.M. Nat'l Pension Fund, Benefit Plan A* v. *Wakefield Indus., Inc.*, 699 F.2d 1254 (D.C. Cir. 1983) (holding that ERISA's nationwide service of process provision applies to those in privity with named defendant). In any event, because petitioner did not raise the issue of personal jurisdiction in his questions for review, the issue is not properly presented.